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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,318	09/08/2003	Allen L. Martin	525-006	5280

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ELLIS & VENABLE, PC
101 NORTH FIRST AVE.
SUITE 1875
PHOENIX, AZ 85003

EXAMINER

TRIEU, THAI BA

ART UNIT PAPER NUMBER

3748

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,318

Applicant(s)

MARTIN, ALLEN L.

Examiner

Thai-Ba Trieu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 29 and 30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 29 and 30 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

The Preliminary Amendment filed on September 08, 2004 is acknowledged. Claims 1-7 and 29-30 remain in the application, and claims 8-28 were cancelled.

Applicant's arguments, see Page 3 of the Preliminary Amendment, filed September 08, 2004, with respect to the restriction requirement in the parent application (09/627,037) have been fully considered and are persuasive. Therefore, the restriction requirement for claims 1-7 and 29-30 has been withdrawn.

Claim Objections

Claim 29 is objected to because of the following informalities:

- Line 2, "***a impeller***" should be replaced by -- **an impeller** -- (for correcting typo-and-grammatical error).

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 29-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically,

- In claim 29, line 11, the recitation of "the new impeller" renders the claim indefinite, since it is not clear that how new the impeller in line 11 is, if being compared

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to an impeller recited in line 2. Applicant is required to identify the difference between the impeller in line 2, and the impeller in line 11.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim **29** is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim **5** of U.S. Patent No.6,129,510. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim **5** of patent anticipates application claims **29**. Accordingly, the instant application claim **29** is not patentably distinct from patent claim **5**. Patent claim **5** requires following elements:

- providing a new impeller ... sealing surfaces,
- attaching an air foil...,
- positioning the new impeller ...,
- precisely spacing the air sealing surfaces...,

- coupling a drive assembly... new impeller, and
- coupling the drive assembly... assembly mount.

while applications claim 29 only requires following elements:

- providing a new impeller ... sealing surfaces,
- positioning the new impeller ...,
- precisely spacing the air sealing surfaces....,
- coupling a drive assembly... new impeller, and
- coupling the drive assembly... assembly mount.

Thus it is apparent that the more specific patent claim **5** encompasses application claims **29**. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer. Note that since Application claim **29** is anticipated by Patent claim **5** and since anticipation is the epitome of obviousness, then Application claim 29 is obvious over Patent claim **5**.

Claim **29** is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim **14** of U.S. Patent No.6,318,346 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim **14** of patent anticipates application claims **29**. Accordingly, the instant application claim **29** is not patentably distinct from patent claim **14**. Patent claim **5** requires following elements:

- providing a new impeller ... sealing surfaces,
- locating at least one groove....,
- positioning the new impeller ...,
- precisely spacing the air sealing surfaces....,
- coupling a drive assembly... new impeller, and
- coupling the drive assembly... assembly mount.

while applications claim 29 only requires following elements:

- providing a new impeller ... sealing surfaces,
- positioning the new impeller ...,
- precisely spacing the air sealing surfaces....,
- coupling a drive assembly... new impeller, and
- coupling the drive assembly... assembly mount.

Thus it is apparent that the more specific patent claim **14** encompasses application claims **29**. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer. Note that since Application claim **29** is anticipated by Patent claim **14** and since anticipation is the epitome of obviousness, then Application claim **29** is obvious over Patent claim **14**.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Minato et al. (Patent Number 5,112,281).

Minato discloses an external drive assembly for use with an impeller of a supercharger comprising:

- a multibelt pulley (20,21,22) adapted to receive a drive source;
- an impeller pulley (3) drivingly coupled to the impeller;
- an external drive belt (5 and 6) having at least one rib coupled to the multibelt pulley to drive the impeller pulley;
- an adjustable idler (30) engagingly connected to the external drive belt;
- wherein the impeller pulley (3) and the multibelt pulley (20,21,22) engage with the at least one rib of the external drive belt (5 and 6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Minato et al. (Patent Number 5,112,281), in view of Kumm (Patent Number 5,176,581).

Minato discloses the invention as recited above; however, fails to disclose the adjustable idler being spring loaded.

Kumm teaches that it is conventional in the belt tensioner art, to utilize a spring loaded idler pulley (10) (See Column 2, lines 35-65).

It would have been obvious to one having ordinary skill in the art at that time the invention was made, to have utilized the adjustably spring loaded idler, as taught by Kumm, to provide a constant loading of the belt, in the Minato device.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Minato et al. (Patent Number 5,112,281), in view of Heimark (Patent Number 6,082,340).

Minato discloses the invention as recited above; however, fails to disclose an internal drive assembly for coupling the impeller pulley to the impeller.

Heimark teaches that it is conventional in the supercharger art, to utilize an internal drive assembly (40,42,44,48,50,52) for coupling the impeller pulley to the impeller (See Figures 2-3).

It would have been obvious to one having ordinary skill in the art at that time the invention was made, to have utilized an internal drive assembly for coupling the impeller

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pulley to the impeller, as taught by Heimark, to improve the performance efficiency of the Minato drive system.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minato et al. (Patent Number 5,112,281), in view of Kumm (Patent Number 5,176,581), and further in view of Fisher (Patent Number 4,028,955).

The modified Minato device discloses the invention as recited above; and further discloses the multibelt pulley engaging at least the external drive belt and a motor belt (5 and 6) (See Manito Figure 2), and adapted to receive a rotatable shaft (2) of an existing engine component (1) (See Figure 2); however, fails to disclose the external drive belt being selected from the group consisting of: serpentine belts, polydrive belts or toothed belts.

Fisher teaches that it is conventional in the belt art, to utilize the serpentine belts, polydrive belts or toothed belts (See Column 5, lines 36-67, and Column 6, lines 1-7).

It would have been obvious to one having ordinary skill in the art at that time the invention was made, to have utilized the serpentine belts, polydrive belts or toothed belts, as taught by Fisher, to provide a positive guide for the belt in the modified Minato device.

Allowable Subject Matter

Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Edsinger (Pub. Number US 2002/0182063 A1) discloses a centrifugal blower with external overdrive.
- Somahara et al. (Patent Number JP 405272494 A) discloses a centrifugal compressor device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thai-Ba Trieu whose telephone number is (571) 272-4867. The examiner can normally be reached on Monday - Thursday (6:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TTB
November 29, 2004


Thai-Ba Trieu
Patent Examiner
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